LETTER

OF

HON. JOHN FINE,

TO HIS CONSTITUENTS.

AUGUST, 1840.

LETTER, &c.

To the Electors of St. Lawrence and Franklin Counties, New-York:

Having been honored by your votes with a seat in Congress, and having served through a long and fatiguing session, I purpose to lay before you a plain and short statement of some of the important measures which were debated and acted on in the House of Representatives, and the reasons which governed me in my votes.

In the South and West, our public men meet their constituents in promiscuous assemblies and give an account of their official services, and answer any enquiries which may be put to them. The custom of the North is different. It is not usual for our Representatives, except in a collective capacity, to address their constituents even in writing.

This departure from the practice of my predecessors may by some be disapproved.

My apology, if any be needed, is the very great importance of the measures, upon which I was called to act, and the desire of your approval after knowing the reasons which influenced me. To many it may seem strange that I preserved an unbroken silence throughout the session. I think you would acquit me of blame, if you could have been present to witness the difficulty and struggle with which the floor was obtained, and the daily waste of time by the raising of points of order, by the calling of the roll, on a demand of the yeas and nays upon unimportant questions, and by the continual repetition of bitter party harangues.

The session was sufficiently protracted without my adding to its length.

The first great question which divided the House, was, which of the two setts of claimants from the state of New Jersey, was entitled to be received as members. I voted in favor of those who are now sitting, because they received a majority of the votes of the people.

This fact has been clearly shewn by a computation made by the Committee on Elections. I regard the question, who is elected to congress, to depend on the further question, who received a majority of the votes as cast by the people? When the latter is ascertained, the former is determined. This has been the uniform practice of congress since the organization of the government, and is in conformity with the constitution. Indeed an election to office, and a majority of the votes which were polled, would seem to be the same thing. What then was the objection to the present members? It was, that others who did not receive the majority of the votes, were certified by the governor, under the broad seal of the state, to have been elected. It was contended by some that the commission of the governor was conclusive evidence that the persons who held it had been elected, and that it could not be questioned without insult to the dignity of a sovereign state.

This objection was answered by referring to the 5th sec. of the 1st art. of the Constitution, which says "That each house of congress shall "be the judge of the *elections*, *returns* and qualifications of its own "members."

If the commission of the governor were prima facie evidence *only* of the facts it certified, then the presumption of its truth is destroyed by the report of the committee, which conclusively shews that the sitting members, and not those who held the governor's commission, received a majority of the votes of the people.

It may be asked, is no respect due to the broad seal of a sovereign state? I answer none, and deservedly none, when it certifies a falsehood.

If there be one ingredient of fraud more than another which induces, nay compels the courts to disregard the attestation of contracts, it is falsehood; and especially when the undisguised design in using the solemn forms of the law, is to gain for the falsehood a confiding reception.

The house refused to admit either class of claimants to seats, until it could be judicially ascertained and reported by the committee which had been elected. If the truth of the governor's commission had not been questioned, the certified claimants would have taken their seats as a matter of course. And when the truth of the governor's commission

was challenged, and evidence of its untruth presented at the clerk's table, and the holders of the commission admitted it to be false, the house would have been justified in admitting to their seats the present members. But from extreme caution and impartiality, the house declined to admit either class, until the committee could report the facts. The report which was subsequently made and adopted and on which the present members were received, proved they were elected. It further appeared in the examinations by the committee, that the governor when he gave the commission to the opposition candidates, *knew* they had not received a majority of the votes, and that the returns from South Amboy and Millville had been withheld. And, strange as it may seem, the governor admitted it in his message to the legislature, and consoled himself with the reflection that congress could rectify his error. Hear his language:

"But we will be asked with force and propriety, is a candidate to "lose his seat in congress because a county clerk does not make a return "of votes. Certainly not. If through inadvertence or design, any "votes have not been returned by the clerk, it is in the power of the "House of Representatives in their discretion to allow those votes and "give the seat to the person who with those votes may be elected."

The house of representatives did exercise this acknowledged power, and on the 10th March, by a majority of twenty-nine votes, admitted the present members.

It was then alleged that some of the votes which had been polled were illegal; that it had been the custom in the state of New Jersey to receive the votes of foreigners without requiring proof of their naturalization, and that both political parties had practised it. This charge was referred to the committee to examine, and power was given to send for persons and papers and to select commissioners in New Jersey to take testimony. A very great amount of proof was taken by the opposing parties and submitted to the committee. More than five hundred votes became the subjects of investigation. The committee were employed in their room eight hours per day for six weeks, and on the 18th July the majority of the committee reported to the house, "that the result of "their investigation had been to increase the majority of the five claim-"ants who received the greatest number of votes from the whole state;"

and the committee recommended and the house adopted the resolution, "that the present sitting members were entitled to occupy their seats as "members of the house."

This is a plain and true statement of the Jersey question. My judgment approves the vote which I gave to admit the present members, and I trust that you will agree with me, that more regard is due to the voice of the people as expressed at the polls, than to the commission of a governor when admitted and proved to be false, although it was sanctioned by the broad seal of a sovereign state.

The next subject which distracted the house, was the manner in which to dispose of petitions for the abolition of slavery in the District of Columbia. These petitions did not come from the residents of the district, from either the slaves or the slave holders, nor did they profess to have their concurrence. The petitioners claimed that they were seeking a redress of grievances, but these grievances did not rest on themselves but on the citizens of other states and of the District of Columbia, who neither complained of the alleged grievances nor asked for their redress, but on the contrary protested against our interference. They did not proffer to make compensation to the master for the loss of his slave, but they asserted that slave holding was immoral and sinful, and they required of congress to abolish it in the District because of our *exclusive jurisdiction.*

The 8th sec. of the 1st art. of the constitution of the United States, provides "that congress shall have power to exercise exclusive legisla-"tion in all cases whatsoever over such District, (not exceeding ten "miles square,) as may by cession of particular states and the accept-"ance of congress become the seat of the government of the United "States." The acts of cession of Virginia and Maryland declare that the land therein described "be and the same is hereby forever ceded "and relinquished to the congress and government of the United States "in full and absolute right and *exclusive jurisdiction*, as well of soil as "persons residing or to reside therein, pursuant to the tenor and effect "of the 8th sec. of the 1st art. of the constitution of the United States, "provided that nothing herein contained shall be construed to vest "in the United States any right of property in the soil or to affect the

"rights of individuals therein otherwise than the same shall or may be "transferred by such individuals to the United States."

I apprehend much error has arisen from a vague and indistinct construction of the terms "exclusive jurisdiction." The District was ceded to the United States for a seat of government, and all power necessary to secure this object was also granted. Besides which, congress has to act the part of a state legislature over its local concerns. It cannot be thought that in regard to these, congress should legislate irrespective of the will of the citizens of the District; much less in opposition to it. When a majority of the citizens shall require congress to abolish slavery, it will be proper to deliberate upon the subject and endeavor to adopt a system similar to that adopted by our own state, to put an end to the existence of slavery within our own limits, or some other which shall be more practicable and more in accordance with the wishes and interests of all the parties to be affected by it. But neither law nor equity can admit the proposition of the abolitionists to set free at once the existing slave against the will of the owner, and without rendering to him a just compensation. The terms "exclusive jurisdiction," I take to mean not a jurisdiction of absolute unlimited power, but one not to be interfered with by any other legislative body. I understand the constitution of the United States to shield the citizens of the District in their rights of person and of property against the usurpation of congress, as well as the citizens of the states against the encroachments of their legislatures.* The institution of slavery is municipal and not national. It existed in Virginia and Maryland, and slaves were [illegible] as property, the subjects of sale and transfer, before the adoption [illegible] institution. The constitution viewed slavery as a long previously existing colonial institution, and recognized its continuance in [illegible] articles.

1. It made the slave as well as white population the basis of representation in congress, five blacks being counted as three whites. See art. I, sec. 2.

2. Congress was prohibited until 1808, from passing any law to prevent the further importation of slaves. Art. 1, sec. 9.

* Art. 5th of the amendments to the constitution: "No person shall be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use without just compensation."

3. The owners of fugitive slaves were authorised to retake them in any of the states, and the states were expressly restricted from discharging the slave from the control of his owner. Art. 4, sec. 2.

Not a syllable can be found in that instrument from which the most loose constructionist can infer, the intention of its framers to surrender the least further control over slavery to congress. The power not having been given, it was reserved by an express clause of the constitution to the states and the people. "The powers not delegated to the United States "by the constitution, nor prohibited by it to the states, are reserved to "the states respectively or to the people." Art. 10 of amend. to constitution.

The general government was organized under the constitution, March 4, 1789; Virginia ceded her part of the District, Dec, 3, 1789, and Maryland, Dec. 19, 1791. The powers of congress as a local legislature over the District were derived from these cessions, and when portions of the citizens of Virginia and Maryland were transferred, together with the territory, the citizens retained the rights which had been previously guaranteed to them by the constitution. They still retain the right "not to be deprived of their property without due "process of law, nor to have their private property taken against their "will for public use without just compensation." Virginia and Maryland could not abridge these rights by legislation before the cession, nor abrogate them by the cession. If congress have no power to act on this subject without the concurrence of the people of the District, it can be of no use to receive and report upon the petitions of strangers, residing in distant states, unless it be to inform them of our limited power to legislate.

This has frequently been done. Congress, in former years, lest it might be thought not sufficiently respectful, have referred similar petitions, and committees have uniformly reported, that congress had no constitutional power to act upon the subject, without the concurrence of the citizens of the district. Still, at every succeeding session, these petitions from distant states have increased in number, and at the last session one member had 515 of them to present. For what other purpose than agitation, is this continued? And is the time of congress of so little value, that we are justified in wasting days and weeks on

matters upon which it is not proper to act, and the discussion of which wounds and estranges the affections of the south, and tends to weaken the bonds of the union?

Suppose that a number of intolerant Protestants at the north, (and many such may be found,) should petition congress to confiscate the property of the Catholics in the District, and appropriate the avails of their nunnery and chapels to other objects, and with a perseverance and zeal peculiar to religious zealots, should continue to petition after repeated answers that we were forbid by the constitution to legislate on the subject? Do you think we should act harshly to reject these petitions? And does not the constitution recognize property in slaves as well as in churches? The question is not whether slavery be an evil, moral and political, nor whether in framing a new constitution you would be willing to recognize it, but it is, shall we prove faithful in observing the present constitution, or perjure ourselves by violating it?

It is thought by some that the rejection of abolition petitions has interfered with and abridged the right of the people to petition. Is this so? The constitution expressly protects the right of the people peaceably to *assemble* and petition the government for a redress of grievances.*

In the governments of Europe this is denied to the people, and in England, at the time of our revolution, assemblies of more than ten persons to petition parliament were prohibited under severe penalties. It is very clear that the rejection by congress of abolition petitions does not interfere with the right of the people to *assemble* for any purpose. I believe the right of petition is not derived from the constitution, but is an elemental and inherent right in every free citizen throughout our whole country. It required no clause in the constitution to grant or protect it, and it is not in the power of congress to take it away. I believe also there is a discretion in every legislative body to receive or reject petitions and to grant or deny their prayer.

This discretion is a reasonable and not an arbitrary one, and may be abused; but the abuse forms no argument against the existence of the power.

* Art. 1, amended constitution, congress shall make "no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievances."

The object of referring a petition to a committee, is to ascertain the truth of its statement or the proper course of action upon it, or both; but when the facts are not disputed, and there is no doubt on the minds of a majority that congress ought not and cannot under present circumstances constitutionally act, I see no use in referring it. The committee on the judiciary, consisting of nine members, among whom were Messrs. Hoffman and Barnard, of New-York, Storrs, of Connecticut, and Mason, of Ohio, made on the 5th June, 1840, an unanimous report, through their chairman, Mr. Sergeant, of Philadelphia, which was unanimously adopted by the house, in which the constitutional power to reject petitions, without referring them, is distinctly recognized. The report was upon the petition of one Spooner, of Massachusetts, against the official conduct of John McLean, one of the judges of the supreme court of the United States, and was presented by Mr. Adams, after several of his colleagues had declined to present it.

The report says, "that the charges upon the memorialist's own shew-"ing are unfounded and unjust, and the committee are further of opin-"ion, that there is no ground whatever for *enquiry*, and are unanimously "of opinion, that if the memorial had been read when it was presented, "and its contents understood, the house would have come to the same "conclusion." In other words, would have rejected it at once without referring it. And to prevent the "blame which the committee seem to "apprehend might attach to the member who presented the petition, they "add it is not their intention to reflect upon him, as the memorial cannot "be said to be disrespectful to the house, and is forbidden by no rule."

Nor is the refusal to receive abolition petitions a novel case and without precedent. The United States senate has not received them since 1835–6. When they are presented to that body objection is made to their reception, and it is then immediately moved to lay the question of reception upon the table. This motion is uniformly carried, and the petition is never again heard of. The house of representatives has done directly what the senate has done indirectly. The former rejects, the latter refuses to receive.

Under the Atherton resolutions, adopted by the house of representatives of the last congress, abolition petitions, immediately on being presented, were laid on the table and no further action was allowed. The

New-York house of assembly, of 1839, in which were many members of the late house, resolved that this was a denial of the right of petition. If the rejection of a petition, and the laying it on the table on its being presented, are both equally a denial of the right of petition, I see no other way to acknowledge the right, but to report in favor of the petition. There is no need of referring a petition to get a knowledge of its contents, for the rules of the house require the contents to be concisely stated before it can be rejected. I cannot draw any other conclusion from the resolutions of the last New-York legislature, than that they desire congress should act *favourably* on abolition petitions. To suppose they wish us to refer them and then reject them, is to believe the legislature would ask us to trifle with the petitioners by encouraging hopes we intend before hand to frustrate. I regret and deplore that public men should, for the sake of a temporary popularity, attempt to confound the right of petition, which is held sacred by us all, with the obligation of congress to aid the abolitionists in their unrighteous efforts to disturb the peace of the union.

The third great question which divided congress at the last session, was the adoption of the Independent Treasury. It is unnecessary for me to discuss the wisdom and expediency of this measure. It had been fully discussed by you before my election, and I was nominated and elected to support it. Not to have voted for it, or to have voted against it, would have been a betrayal of your confidence and have sunk me in the opinion not only of my friends, but of my whole constituency. Nevertheless, I ask your indulgence of a few remarks upon the character and influence of this great measure. I shall not venture upon debateable ground by stating facts of doubtful existence, or by using arguments which are questionable. My object is rather to lay before you what I believe to be admitted by both parties.

It is not denied, except by a very few, that this measure is consistent with the constitution, and its friends are gratified that a proposed important change in the administration of the treasury department is conceded by almost all to be constitutional. You will observe that no change is proposed in the collection or disbursement of the revenue. These have always been managed by individual public officers, and will so continue to be. The custody of the revenue, intermediate its collec-

tion and disbursement, has been hitherto committed to the banks. It is now proposed to commit it to officers appointed by the government, under suitable bonds, and with the sanction of criminal punishment for unfaithfulness, besides subjecting them to the sudden and repeated inspection of sagacious agents, selected by the Secretary of the Treasury.

It is worthy of note, that the government has no power to compel the *banks* to take charge of the public treasure. They may accept or decline it as it suits their convenience—neither is there any power to punish their delinquency. They may refuse to perform their trust, and with the plea of inability confess they have wilfully purloined or squandered the public moneys, but there is no power in the government to punish them.

If the Independent Treasury had been established at the time there was a large deposite of public money in the state banks, apprehensions might very naturally have been entertained that its effects would be what those of the distribution bill of 1836 were, a suspension of specie payments by the banks, and a consequent temporary prostration of business; but the treasury is now comparatively empty, and the receipts are not more than equal to the disbursements. I cannot see how the measure can be productive of evil. During the employment of the state banks, it was alleged they were subservient to the will of the executive from being dependent on his patronage. The selected banks, from the addition of the deposites, became more powerful than their neighbors, and a bitter jealousy was engendered toward the government. The Secretary of the Treasury would sometimes change the deposite banks, and assign reasons which appeared sufficient to him, but by others and always by those interested would appear otherwise. A preference must of necessity be exercised in favor of a few banks to the injury of the rest, and be subject to the suspicion of party favoritism.

It is not likely that any party would receive the praise of passing by institutions under the management of friends, and of selecting others under the direction of political opponents. This government influence over the state banks, which tends to bow the popular will to a spirit of gain, is abolished by an Independent Treasury. The government is not permitted to tamper with the banks by the offer of depositing the public money or by the threat of its withdrawal, but an entire separation is

made between the political and money power of the country. The influence of the government is lessened, and the political freedom of the people remains untempted.

Another effect of the Independent Treasury will be to preserve the currency of the country more uniform by withholding from the banks the means and inducement of sudden contractions and expansions. The receipts and disbursments of the government are necessarily variable. The receipts are some times large, and when deposited in banks, tempt to an increase of discounts and expansion of circulation. Again the disbursements are heavy, the revenue falls off, and the deposites are recalled and the banks are obliged to contract their discounts and call in their circulation. Under the operation of the former a spirit of rash speculation is encouraged hostile to regular business, to industry and morals. And under the latter, a pressure is created subversive of the hopes of thousands in the depreciation and sacrifice of property.

A third effect which may be expected from this measure is a diminution of our imports. If the banks be unable to grant large accommodations by the help of government deposites, it is probable that our purchases from abroad will be graduated by the surplus products of the country to be exported. A debt contracted in the purchase of foreign goods is not paid by the substitution of another debt in the form of stocks. It is known to you that large amounts of stocks of the banks and of states, of rail-roads and canal companies have been sent abroad in pledge for foreign goods which are yet to be paid for by the toil and industry of our people.

The old fashioned philosophy of Franklin, to buy less and sell more, as the means of increasing individual and national wealth, is again receiving favor. We cannot pass sumptuary laws and forbid to the people the privilege of indulging in the luxury and licentiousness of Europe; but the government need not encourage the passion by the loan of its revenue.

I shall notice but one other influence of the Independent Treasury. It will tend to prevent a *surplus* revenue. This, as well as the former, is its natural result. If the revenue should at any time unexpectedly increase beyond the expenditures of the government, this very increase must tend to check itself. The accumulation of specie in the treasury

and its abstraction from the banks, will diminish their basis of circulation and means of discount, and by operating as a check to excessive trade will assist to prevent a redundant revenue. It has accordingly been urged by the opposition as an argument against the measure, that it will tend to keep the treasury poor. It is natural and consistent for those who believe in the power and policy of the general government to collect revenue to be disbursed in works of internal improvement, to be opposed to the Independent Treasury. But I believe a large majority of you think the constitution gives no such authority. You are strict constructionists and believe the power of the government has been delegated for specific purposes, and cannot be extended beyond the plain letter of the constitution. The proposition would have been indignantly rejected by the framers of the constitution, to lay a direct tax to accumulate capital to build roads and canals, or to deposite it with banks for the benefit of commerce. Is it not equally inconsistent with the constitution to collect a surplus revenue by indirect taxation, and to use it in the same way.

There is authority in the constitution to *borrow* money but none to *loan* it to states, to banks, or to individuals. The convention did not anticipate nor provide for a surplus revenue.

I have thus briefly laid before you some of the effects of the Independent Treasury. This, with the other measures of the administration are soon to be submitted for your approval. By them let it be judged. It is beneath the character of an intelligent voter to allow himself to be drawn away from the consideration of measures to the admiration of men. Public office should not be bestowed to reward supposed merit, but as the means of carrying out the opinions and will of the people. The candidates should be regarded as the personation of principles and of measures. Whatever may be the opinions of the opposition presidential candidate himself, a majority of his friends, so far as my means have enabled me to judge, are the friends of a national bank, of a high tariff for protection, of a surplus revenue, and the appropriation of it to works of internal improvement, either directly or by loaning it to the states: of the assumption or guaranty of the debts of the states, or the distribution or pledge of the public lands for their payment, and of the abolition of slavery in the District of Columbia, regardless of the will of its citi-

zens. They who can deliberately approve of these measures corrupt and corrupting to the country, unconstitutional and dangerous to the harmony of the Union, should vote for William H. Harrison; for under the administration of our present Chief Magistrate such measures cannot and will not be adopted.

A favorite object of the administration party has been to reduce the receipts into the Treasury by lessening the duties on imports. The consumers of foreign goods and not the importers bear the burden of this indirect taxation. Is it not better that the people's money should remain in the pockets of the people until it be needed by the government for cases of indisputable constitutional necessity. Another favorite measure of the administration has been to lessen the expenditures of the government. We gave evidence at the last session of our sincerity as friends of retrenchment in the amount of the appropriations, which do not exceed 20 millions of dollars. We resisted the efforts of the opposition to increase them, and rejected their offer to vote for a loan of money or a further issue of treasury notes. We preferred to add a clause to the army and fortification bills authorising the president to delay the completion of some of the works in case of a deficiency of means. Freedom from debt, the lowest receipts of duties and the smallest expenditures consistent with the necessary wants of the country, are the legitimate fruits of democratic policy.

A national bank to have sufficient control over the state banks to regulate their circulation must be made the fiscal agent of the government and its notes become a legal tender of government dues. Besides which, to render a bank with a large capital free from the danger of suspension resulting from the periodical fluctuations of trade, it is desirable if not essential, that a considerable portion of its capital be invested in government stocks. In times of plenty these stocks will pay an interest, and in seasons of pressure, may be readily converted into money. A bank whose whole capital is loaned to individuals, cannot thus defend itself, for its securities become least available when most needed.

A government stock is the evidence of a national debt, the creation of which in peace pre-supposes a lavish expenditure of money by congress or the assumption of the debts of the states. To pay punctually the interest and gradually extinguish the principal of a national debt

will require an unnatural increase of duties on imports. A high tariff when once established cannot be suddenly lessened without serious injury to the manufacturing interests of the country. Such has been our experience. A surplus revenue with its attendant evils will be sure to follow the payment of the debt.

These different measures of a national bank and a national debt, a high tariff and a surplus revenue, seem destined from the history of our country to follow each other. Accordingly the friends of any one of them, are for the most part the friends of all. But I am entering upon topics the proper discussion of which might fill a volume. My aim was rather to present the policy and projects of the two parties that you may so choose between them as to leave no ground of future regret. I therefore close.

My domestic condition, the father of seven children from twenty years to six months of age, compels me to decline a re-election. The first session of every congress has become too long to make congressional life consistent with a proper discharge of my social duties.

Accept my warmest thanks for your past confidence, and believe me,

Yours truly,

JOHN FINE.

Ogdensburgh, N. Y., August, 1840.